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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Zen-Noh Hay, Inc., } No. CV-20-00456-PHX-SPL
9 Plaintiff, }
10 vs. } ORDER
11 Knight AG Sourcing, LLC, et al., }
12 Defendants. }
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15 **I. BACKGROUND**

16 Defendant Knight Ag Sourcing, LLC, and Plaintiff Zen-Noh Hay, Inc. entered into
17 two contracts for the sale of alfalfa hay. (Doc. 1 at ¶¶ 11-15). Plaintiff alleges that “[w]ith
18 the exception of a partial payment on May 28, 2019, Knight Ag has failed to pay ZHI any
19 portion of the amounts due on the orders.” (Doc. 1 at ¶ 22). On March 3, 2020, Plaintiff
20 filed an action in this Court alleging breach of contract and unjust enrichment claims
21 against Knight Ag as well as unjust enrichment claims against Defendants Knight Holding
22 Corporation (a subsidiary of Knight Ag) and SPI Solar, Inc. (Doc. 1).

23 Plaintiff alleges the hay Knight Ag purchased was “acquired for the benefit of
24 Knight Holding, which intended to press and sell the hay to third parties” and that Knight
25 Holding (hereinafter “KHC”) “was enriched as a result of receiving the 2,050 short tons of
26 alfalfa hay for which it did not pay ZHI.” (Doc. 1 at ¶¶ 48-49). Similarly, Plaintiff alleges
27 Defendant SPI Solar “was enriched as a result of receiving the 2,050 short tons of alfalfa
28 hay for which it did not pay ZHI.” (Doc. 1 at ¶ 58).

1 On February 26, 2021, Defendants SPI Solar and KHC filed a motion for partial
2 summary judgment. (Doc. 49). In response, Plaintiff consented to dismissing Defendant
3 SPI. (Doc. 51 at 2). This Court granted the Motion as to Defendant SPI Solar but denied it
4 as to Defendant KHC because, although the record reflects KHC has made some payments
5 for the hay, the Court found that there remained an issue of fact as to whether KHC had
6 received more hay than it paid for. (Doc. 60 at 3-4). Before the Court is Plaintiff's Motion
7 for Summary Judgment (Doc. 44).

8 **II. LEGAL STANDARD**

9 A court must grant summary judgment if the pleadings and supporting documents,
10 viewed in the light most favorable to the non-moving party, "show[] that there is no genuine
11 dispute as to any material fact and the movant is entitled to judgment as a matter of law."
12 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A
13 fact is "material" when, under the governing substantive law, it could affect the outcome
14 of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute
15 of material fact arises if "the evidence is such that a reasonable jury could return a verdict
16 for the nonmoving party." *Id.*

17 The party seeking summary judgment bears the initial burden of informing the court
18 of the basis for its motion and identifying those portions of the pleadings, depositions,
19 answers to interrogatories, and admissions on file, and affidavits, which it believes
20 demonstrate the absence of any genuine issue of material fact. *Celotex*, 477 U.S. at 323.
21 The burden then shifts to the party opposing summary judgment, who "must make a
22 showing sufficient to establish a genuine dispute of material fact regarding the existence
23 of the essential elements of his case that he must prove at trial." *Gorman v. Wolpoff &*
24 *Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009) (citation omitted). The party
25 opposing summary judgment "may not rest upon the mere allegations or denials of [the
26 party's] pleading, but . . . must set forth specific facts showing that there is a genuine issue
27 for trial." Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*
28 *Corp.*, 475 U.S. 574, 586-87 (1986).

1 **III. DISCUSSION**

2 With SPI Solar terminated as a defendant, there are now four claims at issue: Two
 3 breach of contract claims against Knight Ag, an unjust enrichment against Knight Ag, and
 4 an unjust enrichment against KHC. (Doc. 1 at 3-5). Each claim will be addressed in turn.

5 **a. Breach of First Contract (Knight Ag)**

6 To establish a breach of contract claim, a plaintiff must prove the existence of a
 7 contract, the breach of the contract, and resulting damages. *Clark v. Compania Ganadera*
 8 *de Cananea, S.A.*, 95 Ariz. 90, 94 (1963).

9 To address the breach of contract claims here, the Court must first consider which
 10 party bore the risk of loss of the hay. Under the first contract, Knight Ag would purchase
 11 hay at either a facility called Arizona Hay Press or a facility called M & M Farms. (Doc.
 12 44 at 2). The contract indicated “FOB in Store At Arizona Hay Press” and “FOB M & M
 13 Farms.” (Doc. 44 at 2, 3). Under Arizona Revised Statute § 47-2509(C), under an FOB
 14 (free on board) contract “the risk of loss passes to the buyer on his receipt of the goods if
 15 the seller is a merchant.” The parties here disagree about at what point Knight Ag
 16 “received” the hay under either contract, but the first contract is particularly problematic
 17 as it relates to Arizona Hay Press. Knight Ag and Arizona Hay Press had a “shared
 18 premises” so whenever Knight Ag purchased hay located there, it “simply moved the hay
 19 into the press structure, then pressed it.” (Doc. 44 at 2). Plaintiff would be notified that the
 20 hay was pressed and would therefore send an invoice to Knight Ag. (Doc. 44 at 2). Knight
 21 Ag argues that, under the first contract, the hay “that was being stored on the premises
 22 remained Zen-Noh Hay’s property until it was transported to the hay press – the hay was
 23 not received by Knight Ag Sourcing until then.” (Doc. 51 at 10). Thus, because Knight Ag
 24 and Arizona Hay shared the facility, Knight Ag argues it did not “receive” the hay until it
 25 was actually pressed.

26 Plaintiff alleges that Knight Ag purchased 386.14 tons of hay at Arizona Hay Press
 27 on April 23, 2019 and 127.38 tons on May 1, 2019. (Doc. 44 at 3). However, Plaintiff
 28 inspected Knight Ag’s facility and “determined that an additional 402.175 tons of alfalfa

1 hay that had been previously moved to that facility was no longer present.” (Doc. 44 at 3).
 2 Plaintiff argues this “logically means that the hay must have been pressed by Knight Ag.”
 3 (Doc. 44 at 3). Knight Ag alleges it did not press the hay and believes the hay was
 4 wrongfully converted. (Doc. 51 at 5). Specifically, Knight Ag alleges that Bob Wood, who
 5 operated the hay press equipment, “admittedly converted hay from Knight Ag Sourcing on
 6 at least two occasions to satisfy a claimed debt” without the knowledge or permission of
 7 Knight Ag, and might have done so here. (Doc. 51 at 5).

8 Plaintiff has not met its initial burden of showing that no issue of fact exists
 9 regarding whether Knight Ag breached the first contract. Plaintiff does not seem to contest
 10 the fact that the risk of loss did not pass to Knight Ag until the hay was pressed. Rather,
 11 Plaintiff essentially argues that the *lack* of evidence as to where the hay went necessarily
 12 means that Knight Ag “logically” must have pressed it. (Doc. 44 at 3). But “mere allegation
 13 and speculation do not create a factual dispute for purposes of summary judgment.” *Nelson*
 14 *v. Pima Cnty. Coll.*, 83 F.3d 1075, 1081–82 (9th Cir. 1996). Plaintiff argues that “Knight
 15 Ag has provided no evidence to support any finding other than it improperly took ZHI’s
 16 hay,” but Plaintiff, as the movant, has not yet met its initial burden of showing that Knight
 17 Ag *did* take the hay. (Doc. 56 at 5). Most critically, Plaintiff has not presented any evidence
 18 that Knight Ag did in fact move the hay to the pressing shed and press the hay. And Knight
 19 Ag has presented evidence raising a concern that the hay was wrongfully converted. The
 20 Court therefore cannot grant summary judgment on the first breach of contract claim.

21 **b. Breach of Second Contract (Knight Ag)**

22 The risk of loss analysis for the second contract is more straightforward, contrary to
 23 Knight Ag’s assertion. (Doc. 51 at 10). The hay under the second contract was located at a
 24 separate facility called Spot Road Farm, and the second contract indicated “FOB ZHI Spot
 25 Road Farm.” (Doc. 44 at 3); (Doc. 51 at 4). Thus, under A.R.S. § 47-2509(C), the risk of
 26 loss passed to Knight Ag once Knight Ag received the hay.

27 Ag argues that “[t]he agreement to delivery hay under [the second contract] without
 28 prepayment supplemented the written contract by also allowing for delivery without

1 prepayment.” (Doc. 51 at 11). Thus, Knight Ag argues that “Zen-Noh Hay retained title to
 2 the hay that it delivered under [the second contract] without prepayment.” (Doc. 51 at 10-
 3 11). Knight Ag therefore argues that “[t]he hay covered by [the second contract] for which
 4 payment had not been made was not ‘received’ by Knight Ag Sourcing.” (Doc. 51 at 11).

5 The Court cannot agree with Knight Ag’s analysis. Even assuming, without
 6 deciding, that Plaintiff waived the contractual provision requiring prepayment such that
 7 Plaintiff retained title to the hay until payment was made, nothing in A.R.S. § 47-2509(C)
 8 requires that Knight Ag obtain *title* to the hay for the risk of loss to pass to it. Rather, the
 9 statute merely requires that Knight Ag “receive” the hay, *i.e.* come into physical possession
 10 of it. *See, e.g.*, *Gen. Dynamics Corp. v. Zantop Int'l Airlines*, 147 Ariz. 92, 93, 708 P.2d
 11 773, 774 (Ct. App. 1985) (“The question of possession is critical because in a sale of
 12 personal property the risk of loss or damage passes to a buyer only when he receives the
 13 property. A.R.S. § 47–2509(C). We believe the conditional purchaser has a right of action
 14 for damage to the property only when he has possession.”). The Court declines to read the
 15 statute so narrowly as to require legal title. Accordingly, the risk of loss under the second
 16 contract passed to Knight Ag once the hay was delivered to it.

17 Knight Ag does not deny that it came into possession of the hay under the second
 18 contract. Rather, Knight Ag alleges that the hay under the second contract “was removed
 19 without the knowledge or consent of Knight Ag,” possibly by Bob Wood. (Doc. 51 at 5-6).
 20 However, it is immaterial *how* the hay went missing. Regardless of how the hay left Knight
 21 Ag’s possession, Knight Ag bore the risk of loss under the second contract, and Knight Ag
 22 is liable to Plaintiff for the cost of the hay under that contract. Knight Ag has therefore
 23 breached the contract by failing to pay for the hay. Plaintiff is entitled to judgment as a
 24 matter of law on the second breach of contract claim.

25 **c. Unjust Enrichment (Knight Ag)**

26 Plaintiff argues “Knight Holding also benefited from the hay acquired by Knight
 27 Ag” because “it was Knight Holding that exported and sold the hay to its customers.” (Doc.
 28 44 at 5-6). Plaintiff therefore argues that both Knight Ag and KHC were “enriched through

1 the acquisition of the hay, and ZHI was correspondingly impoverished without
 2 justification.” (Doc. 44 at 6).

3 An unjust enrichment claim requires proof of five elements: “(1) an enrichment, (2)
 4 an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the
 5 absence of justification for the enrichment and impoverishment, and (5) the absence of a
 6 remedy provided by law.” *Freeman v. Sorchych*, 226 Ariz. 242, 251, ¶ 27, 245 P.3d 927,
 7 936 (App. 2011). Because the Court finds that Knight Ag is liable for breach of the second
 8 contract, only the first contract is at issue with regards to unjust enrichment.

9 Defendants argue that “[n]o colorable argument can be made that Knight Ag
 10 Sourcing was unjustly enriched by the conversion (by Bob Wood or otherwise)” of the hay.
 11 (Doc. 51 at 12). As it relates to the second contract, for which Knight Ag did not bear the
 12 risk of loss until it actually pressed the hay, there remains an issue of fact as to whether
 13 Knight Ag was unjustly enriched. As explained above, it is not clear whether Knight Ag in
 14 fact pressed the hay or whether it was taken by another person or entity. Accordingly, the
 15 Court cannot grant summary judgment as to Plaintiff’s unjust enrichment claim against
 16 Knight Ag, at least as it relates to the first contract.

17 **d. Unjust Enrichment (KHC)**

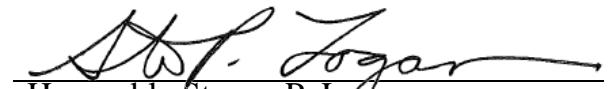
18 Defendants argue that “Knight Holding Corporation and SPI Global Holdings, Inc.,
 19 paid \$210,000 directly to Zen-Noh Hay” and that there “has been no demonstration by Zen-
 20 Noh Hay that hay in excess of this value was taken by or delivered to Knight Holding
 21 Corporation.” (Doc. 51 at 13).

22 The Court considered this issue in its order denying KHC’s Motion for Summary
 23 Judgment (Docs. 49 & 60) and largely reincorporates that analysis here. Defendants argued
 24 that “[h]ow much hay had been delivered by Zen-Noh Hay to Knight Ag Sourcing, and in
 25 turn had been resold to other buyers by Knight Ag Sourcing before Knight Holding
 26 Corporation acquired its interest, has never been addressed by Zen-Noh Hay.” (Doc. 59
 27 at 4). Defendants are correct: Plaintiff has not presented any evidence regarding how much
 28 hay KHC has pressed and used/sold. Therefore, there remains an issue of fact as to whether

1 KHC received more hay than that which is have already paid for, and the Court cannot
2 grant summary judgment on the unjust enrichment claim. *See* (Doc. 60 at 3-4).

3 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Summary Judgment
4 (Doc. 44) is **granted in part** and **denied in part**. The Motion is granted as to Plaintiff's
5 Second Cause of Action (Breach of Second Contract against Knight Ag Sourcing LLC)
6 and denied as to all other claims.

7 Dated this 6th day of May, 2021.

8 
9 Honorable Steven P. Logan
10 United States District Judge

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